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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,507	12/10/2001	H. Ward Silver	PHYS118084	9101

7590

08/03/2004

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EXAMINER

LAYNO, CARL HERNANDZ

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/016,507	Applicant(s) SILVER ET AL.	
	Examiner <i>Carl H. Layno</i> Carl H. Layno 7/30/04	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 3, 19, 27 and 43 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 14-18, 20-26, 28-42, 44-58 and 62-64 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 7, 11-13 and 59-61 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment which was received by the Office on May 28, 2004.

2. Claims 3, 19, 27, and 43 are canceled. Claims 59-64 have been added. Claims 1, 2, 4-18, 20-26, 28-42, and 44-64 are active and pending.

Information Disclosure Statement

3. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449) which was received by the Office on May 4, 2004.

Claim Objections

4. In view of the applicant's cancellation of claims 3 and 27, the Examiner is withdrawing the 37 CFR 1.75(b) objections, which were made against claims 5 and 29 in the last Office action.

Claim Rejections - 35 USC § 112

5. In view of applicant's modifications to the claim 34, the Examiner is withdrawing the 35 U.S.C 112 2nd paragraph rejections which were made against claims 34 and 35 in the last Office action.

Claim Rejections - 35 USC § 102

6. Upon further reconsideration of applicant's arguments and amendments to the claims, and numerous claim cancellations, the Examiner is withdrawing the 35 U.S.C 102 rejections based upon the Fernandez et al '615-A1, Lee '432-B2, and Muraca '917-A1 references, which were made against claims 1-3, 5, 7, 9-11, 14, 21-27, 29, and 42 in the last Office action.

7. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 4-6, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Faisandier '473 (Applicant's prior art).

The Faisandier '473 patent, cited by the applicant as prior art, describes a system for programming an implantable medical device **200** (Fig. 1). The system includes an external programmer **300** equipped with a programming head **320** for wirelessly communicating with the implantable medical device **200**. In use, the implantable medical device is programmed with a list of objects **230** having many potentially different versions (Fig. 1). However, because the programmer is equipped with "basic minimum software", it has no trouble communicating with the implantable medical device **200** (col.2, lines 63-64). Lacking specifics, the Examiner has

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used Faisandier's "list of objects" interchangeably with the applicant's "directory of objects" since they appear to perform the same function.

In regard to claims 2 and 5, the programmer can access biological signals as well as parametric data (col.1, lines 34-35).

In regard to claims 4 and 6, the programmer software accesses the objects within the implantable medical device and may also re-program the device (col.2, lines 64-col.3, line 6).

In regard to claims 9 and 10, the waveform display **350** (Fig.1) performs the function of applicant's claimed "output device".

Allowable Subject Matter

10. Claims 7, 11-13, and 59-61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 8, 14-18, 20-26, 28-42, 44-58, and 62-64 are allowed.

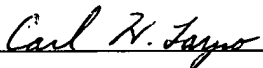
Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (703) 308-3694. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. All FAXed correspondence should be sent to the Office's new official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (703) 305-7520.



CARL LAYNO
PRIMARY EXAMINER

CHL
7/30/2004